

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
TOM LaCROSSE,)
)
Appellant,)
)
vs.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)

PCHB No. 505

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$200.00 civil penalty for an
alleged violation of RCW 90.48.080 under the penalty provision of
RCW 90.48.144; having come on regularly for hearing before the Pollution
Control Hearings Board on the 5th day of June, 1974, at Lacey, Washington;
and appellant, Tom LaCrosse, appearing through his attorney, Bryce H.
Dille and respondent, State of Washington, Department of Ecology,
appearing through its attorney, Charles W. Lean; and Board members present
at the hearing being W. A. Gissberg, presiding officer, and Walt Woodward;
and the Board having considered the sworn testimony, exhibits, records

1 and files herein and having entered on the 17th day of June, 1974, its
2 proposed Findings of Fact, Conclusions of Law and Order, and the Board
3 having served said proposed Findings, Conclusions and Order upon all
4 parties herein by certified mail, return receipt requested and twenty
5 days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 17th day of
11 June, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 6th day of August, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16
17 Walt Woodward
18 WALT WOODWARD, Chairman

19 W. A. Gissberg
20 W. A. GISSBERG, Member
21
22
23
24
25

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This matter, the appeal of a \$200.00 civil penalty for an alleged violation of RCW 90.48.080 under the penalty provision of RCW 90.48.144, came before the Pollution Control Hearings Board (William A. Gissberg, presiding officer, and Walt Woodward) at a formal hearing in the Board's office at Lacey on June 5, 1974.

Appellant appeared through Bryce H. Dille, respondent through Charles W. Lean. Eugene E. Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

EXHIBIT A

FINDINGS OF FACT,

I.

Appellant owns and operates a dairy at Graham, about eight miles south of Puyallup, Pierce County. On property about one-quarter mile square, he runs about 125 cows. Disposal of manure from these animals is a daily chore involving between 12,000 and 18,000 gallons of animal waste diluted by water. It is appellant's practice to remove most of this liquid manure from his property by tank truck. On an almost daily basis, however, he also employs a sprinkler which distributes some of the liquid on appellant's property in a 150-foot-diameter circle. The sprinkler can be, and is moved from time to time to various locations on appellant's property.

II.

On July 10, 1973, in response to a complaint, an investigator on respondent's staff investigated a drainage ditch which runs from the western edge of appellant's property across two neighbor properties and into the drainage ditch of a nearby public road. The investigator saw manure, from a sprinkler distribution near the western edge of appellant's property, running into the ditch. Samples taken proved the ditch was badly contaminated with a fecal coliform count hazardous to human health.

III.

On July 11, 1973 and on July 24, 1973, the investigator recommended to appellant that he move his liquid manure sprinkler from the area at the western edge of appellant's property near the

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 drainage ditch. No other enforcement action was taken by respondent
2 at this time.

3 IV.

4 On October 24, 1973, in response to another complaint, respondent's
5 investigator again took samples from and near the ditch on properties
6 neighboring to appellant's property. Again, fecal coliform counts
7 hazardous to human health were proven in laboratory tests. As a
8 result, respondent, on November 15, 1973, levied a civil penalty
9 of \$200.00 against appellant under RCW 90.48.144 for a violation
10 of RCW 90.48.080 and, on December 31, 1973, affirmed the penalty
11 after appellant filed an application for relief from the penalty,
12 which is the subject of this appeal.

13 V.

14 On October 24, 1973, about 25 cattle owned by the neighbor
15 immediately west of appellant's property had access to the
16 drainage ditch and to low areas which drained into the ditch.
17 On October 24, 1973, the investigator saw no manure sprinkler on
18 appellant's property and saw no manure draining into the ditch
19 from appellant's property.

20 VI.

21 Since mid-August, 1973, appellant had not used the western
22 portion of his property for the sprinkler distribution of
23 liquid manure.

24 VII.

25 Any Conclusion of Law hereinafter recited which should be
26 deemed a Finding of Fact is hereby adopted as such.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 From these Findings, the Pollution Control Hearings Board
2 comes to these

3 CONCLUSIONS OF LAW

4 I.

5 There was a violation of RCW 90.48.080 on October 24, 1973
6 in the general area of the drainage ditch described in respondent's
7 instant penalty assessment against appellant.

8 II.

9 However, it was not proven by a preponderance of evidence
10 that appellant caused or allowed the violation.

11 III.

12 Any Finding of Fact which should be deemed a Conclusion of
13 Law is hereby adopted as such.

14 Therefore, the Pollution Control Hearings Board issues this

15 ORDER

16 The appeal is sustained and the \$200.00 penalty is vacated
17 as to appellant.

18 DONE at Lacey, Washington, this 17th day of June, 1974.

19 POLLUTION CONTROL HEARINGS BOARD

20
21 Walt Woodward
22 WALT WOODWARD, Chairman

23
24 W. A. Gissberg
25 W. A. GISSBERG, Member

26 FINDINGS OF FACT,
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